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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 150618531-5876-01]**

**RIN 0648-BF17**

**Atlantic Highly Migratory Species; Implementation of the International Commission for the Conservation of Atlantic Tunas Electronic Bluefin Tuna Catch Documentation System**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to revise the regulations governing international trade documentation and tracking programs for Atlantic bluefin tuna to implement recommendations adopted at recent meetings of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The proposed rule would transition the current ICCAT paper-based bluefin tuna catch documentation program (BCD program), used in the United States by highly migratory species (HMS) international trade permit (ITP) holders, to use of the ICCAT electronic bluefin tuna catch documentation system (eBCD system).

**DATES:** Written comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments, identified by “NOAA-NMFS-2015-0116”, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0116>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Margo Schulze-Haugen, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

NMFS will also conduct a public conference call and webinar to solicit public comments on this proposed rule on October 13, 2015. For specific information, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and other relevant documents are available from the Atlantic Highly Migratory Species Management Division website at [www.nmfs.noaa.gov/sfa/hms](http://www.nmfs.noaa.gov/sfa/hms).

**FOR FURTHER INFORMATION CONTACT:** Carrie Soltanoff at (301) 427-8503.

**SUPPLEMENTARY INFORMATION:** Atlantic bluefin tuna are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.*

Under ATCA, the Secretary of Commerce shall promulgate such regulations as may be necessary and appropriate to implement ICCAT recommendations. The implementing regulations for international trade documentation and tracking programs for HMS are at 50 CFR part 300.

## **Background**

In response to the need to detect fraud and deter illegal, unregulated, and unreported (IUU) shipments, as well as to improve tracking of bluefin tuna catch and commerce, ICCAT has adopted recommendations establishing an eBCD system. The eBCD system builds on the previously established ICCAT statistical document program and the paper-based BCD program. In this rulemaking, NMFS is proposing to implement recent ICCAT recommendations through minor administrative regulatory adjustments to transition the current paper-based BCD program to the ICCAT eBCD system.

ICCAT Recommendation 92-01 first established a statistical document program for Atlantic bluefin tuna, which was implemented in the United States in 1995 (60 FR 14381; March 17, 1995). ICCAT required that all bluefin tuna, when imported into the territory of a Contracting Party or at the first entry into a regional economic organization, be accompanied by an ICCAT Bluefin Tuna Statistical Document that included information such as product type, species, amount, and flag nation of the harvesting vessel. Contracting parties collected the final statistical documents and submitted summarized data to ICCAT for use in fishery management. Initially, the ICCAT bluefin tuna statistical document program covered imports and exports of frozen product only. The program was later expanded to cover fresh product and re-export of product. In addition to Atlantic bluefin tuna, the program also included Pacific and southern

bluefin tuna to avoid mislabeling of Atlantic bluefin tuna for import or export without documentation.

The current paper-based BCD program was adopted by ICCAT in 2007 (Recommendation 07-10, currently Recommendation 11-20) and implemented in the United States in 2008 (73 FR 31380; June 2, 2008). The BCD program expanded the bluefin tuna statistical document program to incorporate consignment tracking beginning with documentation of catch, through farming operations and trade, to the final importer. The BCD program requires paper bluefin tuna catch documents (BCDs) to accompany all bluefin tuna imports, exports, and re-exports, and requires validation of the documents by the exporting or re-exporting country, unless it meets an exemption for tagged product. Under U.S. domestic regulations, Atlantic bluefin tuna harvested for commercial purposes by U.S. vessels must be tagged. Thus, the United States has been able to take advantage of the validation exemption as applicable. In addition, under existing domestic regulations, the United States requires an international trade permit (ITP) for anyone in the United States to import, export, or re-export bluefin tuna.

In 2010, ICCAT adopted Recommendation 10-11 to develop an eBCD system, which would build on and ultimately replace the paper-based BCD program. Deadlines were set for system implementation in subsequent recommendations but ultimately proved too ambitious given system development and financing issues. Most recently, ICCAT Recommendation 13-17 established a timeline for full implementation of the eBCD system by March 1, 2015. However, in 2014, ICCAT conducted an international test of the eBCD system and noted ongoing technical difficulties and delays in the development of certain core functionalities. Based on these results, ICCAT made the decision, pursuant to paragraph 5 of Recommendation 13-17, that the eBCD system would not be ready for full implementation by the March 1, 2015 deadline and that paper

BCDs could continue to be used until the system could be fully implemented. This decision does not preclude ICCAT Contracting Parties from voluntarily using the eBCD system, which is currently available both for testing and use on a voluntary basis.

NMFS anticipates that the ICCAT eBCD system will be fully developed and operational in 2016 with implementation by ICCAT Contracting Parties potentially required as early as March 1, 2016. NMFS anticipates more precise dates and timing requirements to be established by ICCAT at its annual meeting in November 2015. The eBCD system was designed to collect largely the same information that is currently collected under the paper-based BCD program. Therefore, in this rulemaking, NMFS is proposing minor adjustments to current regulations implementing the paper-based BCD program to implement the electronic system and to require its use for future bluefin tuna catch documentation.

### **Request for Comments**

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, or by mail. Written comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*. Please see the **ADDRESSES** section for more information about submitting comments.

### **Public Conference Call and Webinar**

NMFS will hold a public hearing via conference call and webinar to provide an opportunity for the public to comment on the proposed management measures.

**Table 1. Date and Time of Public Conference Call and Webinar**

Date	Time	Location	Address
October 13, 2015	2:30 – 4:30 p.m. Eastern Time	Public Conference Call & Webinar	To participate in conference call, call: (800) 593-7191 Passcode: 9589317

			<p>To participate in webinar, go to:  <a href="https://noaaevents3.webex.com/noaaevents3/onstage/g.php?d=999829506&amp;t=a">https://noaaevents3.webex.com/noaaevents3/onstage/g.php?d=999829506&amp;t=a</a></p> <p>Meeting Number: 999 829 506  Meeting Password: NOAA</p>
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Requests for auxiliary aids should be directed to Carrie Soltanoff at (301) 427-8503 at least 7 days prior to the conference call and webinar. The public is reminded that NMFS expects participants on phone conferences to conduct themselves appropriately. At the beginning of the meeting, a representative of NMFS will explain the ground rules (e.g., attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). The NMFS representative will structure the meeting so that all participating members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not will be asked to leave the meeting.

### **Classifications**

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Magnuson-Stevens Act, 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

In addition, NMFS has determined that this proposed rule would not affect the coastal zone of any state, and a negative determination pursuant to 15 CFR 930.35 is not required.

Therefore, pursuant to 15 CFR 930.33(a)(2), coordination with appropriate state agencies under section 307 of the Coastal Zone Management Act is not required.

This action has been preliminarily determined to be categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216–6, subject to further consideration after public comment. A draft memorandum for the file has been prepared explaining that a categorical exclusion applies because the rule would implement minor adjustments to the regulations and would not have a significant effect, individually or cumulatively, on the human environment. This action is also not expected to directly affect fishing effort, quotas, fishing gear, authorized species, interactions with threatened or endangered species, or other relevant parameters. A final determination will be made prior to publication of the final rule for this action.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act. ICCAT Recommendation 13-17, as anticipated to be amended at the 2015 ICCAT annual meeting, requires transition of the paper-based BCD program to an eBCD system. To comply with this Recommendation, NMFS will require bluefin tuna dealers with HMS ITPs to use the eBCD system as early as March 1, 2016. An amendment to OMB Control Number 0648-0040 (Dealer Reporting Family of Forms) will be subsequently submitted to the Office of Management and Budget for approval.

The Chief Council for Regulation of the Department of Commerce has certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule is necessary to implement recommendations of ICCAT, as required by the ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act.

Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT recommendations.

NMFS is preparing this proposed rule to implement recommendations that pertain to an eBCD system. In response to the need to detect fraud and deter IUU shipments, as well as to improve tracking of bluefin tuna catch and commerce, ICCAT adopted Recommendations 10-11 and 13-17 establishing an eBCD system. NMFS anticipates that the eBCD system will be fully developed by 2016 with implementation potentially required as early as March 1, 2016. NMFS anticipates more precise dates and timing requirements to be established by ICCAT at its annual meeting in November 2015.

Current international fisheries regulations for HMS address many of the elements adopted under ICCAT recommendations for the paper-based BCD program. See 50 CFR 300.180-189. The ICCAT eBCD system largely maintains the elements and requirements of the paper-based BCD program but in an electronic format. Thus, the proposed action proposes minor regulatory adjustments to bring domestic regulations in line with the ICCAT recommendations to transition to the electronic program. The proposed action would affect approximately 259 HMS ITP holders. All 259 ITP holders are considered to be small under the Small Business Administration's size standards. The proposed action would not significantly alter current regulations, but would require use of an electronic system where paper is currently used. Because the current regulations require that ITP holders use paper BCDs, and the eBCD system is anticipated to collect the same information that is currently collected under the paper-based BCD program, the proposed action is not expected to result in significant operational changes or adverse socioeconomic impacts on ITP holders. The public reporting burden for paper BCDs is estimated at .08 hours (5 minutes) per form and the electronic BCDs would have



an equivalent reporting burden. The burden associated with this requirement will be analyzed in the Paperwork Reduction Act submission prepared for a revision or change to OMB 0648-0040 (Dealer Reporting Family of Forms).

The eBCD system would require ITP holders to use a computer with internet access. This is not a new cost, however, as ITP holders are already required to use a computer and the internet to access the electronic dealer reporting system, as analyzed in the 2012 final rule (77 FR 47303; August 8, 2012).

### **List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Exports, Fish, Fisheries, Fishing, Imports, Reporting and recordkeeping requirements, Treaties.

Dated: October 2, 2015

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 300, subpart M, is proposed to be amended as follows:

### **PART 300-INTERNATIONAL FISHERIES REGULATIONS**

1. The authority citation for part 300, subpart M, continues to read as follows:

**Authority:** 16 U.S.C. 951-961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 300.181, revise the definitions for “BCD tag” and “Consignment document” and add definitions for “eBCD” and “eBCD system” in alphabetical order to read as follows:

**§ 300.181 Definitions.**

\* \* \* \* \*

*BCD tag* means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a BCD or eBCD.

\* \* \* \* \*

*Consignment document* means either an ICCAT eBCD or a catch document issued by a nation to comply with the ICCAT bluefin tuna catch documentation program; or an ICCAT, IATTC, IOTC, or CCSBT statistical document or a statistical document issued by a nation to comply with such statistical document programs.

\* \* \* \* \*

*eBCD* means an electronic bluefin tuna catch document (eBCD) generated by the ICCAT eBCD system to track bluefin tuna catch and trade as specified in ICCAT recommendations.

*eBCD system*, for purposes of the subpart, is the ICCAT electronic system for creating, editing, and transmitting ICCAT catch and trade documentation for bluefin tuna as specified in ICCAT recommendations and required in these regulations.

\* \* \* \* \*

3. In § 300.185, revise paragraphs (a)(2)(ii) through (vii), remove paragraphs (a)(2)(viii) and (ix), and revise paragraphs (a)(3), (b)(2) and (3), (c)(2)(i) and (iii), and (c)(3).

The revisions read as follows:

**§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.**

(a) \* \* \*

(2) \* \* \*

(ii) Bluefin tuna:

(A) Imports which were re-exported from another nation must also be accompanied by an original, completed, approved, validated, species-specific re-export certificate. For Atlantic bluefin tuna, this requirement must be satisfied by electronic receipt and completion of a re-export certificate in the ICCAT eBCD system, following instructions provided by NMFS.

(B) Bluefin tuna, imported into the Customs territory of the United States or entered for consumption into the separate customs territory of a U.S. insular possession, from a country requiring a BCD tag on all such bluefin tuna available for sale, must be accompanied by the appropriate BCD tag issued by that country, and said BCD tag must remain on any bluefin tuna until it reaches its final import destination. If the final import destination is the United States, which includes U.S. insular possessions, the BCD tag must remain on the bluefin tuna until it is cut into portions. If the bluefin tuna portions are subsequently packaged for domestic commercial use or re-export, the BCD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(iii) Fish or fish products regulated under this subpart other than bluefin tuna and shark fins.

(A) Imports that were previously re-exported and were subdivided or consolidated with another consignment before re-export, must also be accompanied by an original, completed, approved, validated, species-specific re-export certificate.

(B) All other imports that have been previously re-exported from another nation should have the intermediate importers certification of the original statistical document completed.

(iv) Consignment documents must be validated as specified in § 300.187 by an authorized government official of the flag country whose vessel caught the fish (regardless of where the fish are first landed). Re-export certificates must be validated by an authorized government official of the re-exporting country. For electronically generated Atlantic bluefin tuna catch documents, validation must be electronic using the ICCAT eBCD system.

(v) A permit holder may not accept an import without the completed consignment document or re-export certificate as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(vi) For fish or fish products, except shark fins, regulated under this subpart that are entered for consumption, the permit holder must provide correct and complete information, as requested by NMFS, on the original consignment document that accompanied the consignment. For Atlantic bluefin tuna, this information must be provided electronically in the ICCAT eBCD system following instructions provided by NMFS.

(vii) Customs forms can be obtained by contacting the local CBP port office; contact information is available at *www.cbp.gov*. For a U.S. insular possession, contact the local customs office for any forms required for entry.

(3) *Reporting requirements.* For fish or fish products regulated under this subpart, except shark fins, that are entered for consumption and whose final destination is within the United States, which includes U.S. insular possessions, a permit holder must submit to NMFS the original consignment document that accompanied the fish product as completed under paragraph (a)(2) of this section, to be received by NMFS along with the biweekly report as required under § 300.183(a). A copy of the original completed consignment document must be submitted by the permit holder, to be received by NMFS, at an address designated by NMFS, within 24 hours of

the time the fish product was entered for consumption into the Customs territory of the United States, or the separate customs territory of a U.S. insular possession. For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as directed in paragraph (a)(2)(vi) of this section.

(b) \* \* \*

(2) *Documentation requirements.* A permit holder must complete an original, approved, numbered, species-specific consignment document issued to that permit holder by NMFS for each export referenced under paragraph (b)(1) of this section. For Atlantic bluefin tuna, this requirement must be satisfied by electronic completion of an export certificate in the ICCAT eBCD system, following instructions provided by NMFS. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific export consignment. A permit holder must provide on the consignment document the correct information and exporter certification. The consignment document must be validated, as specified in § 300.187, by NMFS, or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export consignment.

(3) *Reporting requirements.* A permit holder must ensure that the original, approved, consignment document as completed under paragraph (b)(2) of this section accompanies the export of such products to their export destination. A copy of the consignment document must be received by NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was exported from the United States or a U.S. insular possession. For Atlantic bluefin

tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as directed in paragraph (b)(2) of this section.

(c) \* \* \*

(2) *Documentation requirements.* (i) If a permit holder re-exports a consignment of bluefin tuna, or subdivides or consolidates a consignment of fish or fish products regulated under this subpart, other than shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section, the permit holder must complete an original, approved, individually numbered, species-specific re-export certificate issued to that permit holder by NMFS for each such re-export consignment. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific re-export consignment. A permit holder must provide on the re-export certificate the correct information and re-exporter certification. The permit holder must also attach the original consignment document that accompanied the import consignment or a copy of that document, and must note on the top of both the consignment documents and the re-export certificates the entry number assigned by CBP authorities at the time of filing the entry summary. For Atlantic bluefin tuna, these requirements must be satisfied by electronic completion of a re-export certificate in the ICCAT eBCD system, following instructions provided by NMFS.

\* \* \* \* \*

(iii) Re-export certificates must be validated, as specified in §300.187, by NMFS or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting validation for re-exports should notify NMFS as soon as possible to avoid delays in inspection and validation of the re-export shipment. Electronic re-

export certificates created for Atlantic bluefin tuna using the ICCAT eBCD system will be validated electronically.

(3) *Reporting requirements.* For each re-export, a permit holder must submit the original of the completed re-export certificate (if applicable) and the original or a copy of the original consignment document completed as specified under paragraph (c)(2) of this section, to accompany the consignment of such products to their re-export destination. A copy of the completed consignment document and re-export certificate (if applicable) must be submitted to NMFS, at an address designated by NMFS, and received by NMFS within 24 hours of the time the consignment was re-exported from the United States. For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as directed in paragraph (c)(2) of this section.

\* \* \* \* \*

4. In § 300.186, revise paragraph (a) to read as follows:

**§ 300.186 Completed and approved documents.**

(a) *NMFS-approved forms.* A NMFS-approved consignment document or re-export certificate may be obtained from NMFS to accompany exports of fish or fish products regulated under this subpart from the Customs territory of the United States or the separate customs territory of a U.S. insular possession.

\* \* \* \* \*

5. In § 300.187, revise paragraphs (f) introductory text and (f)(2) to read as follows:

**§ 300.187 Validation requirements.**

\* \* \* \* \*

(f) *BCD tags*. The requirements of this paragraph apply to Pacific bluefin tuna.

Requirements for tagging Atlantic bluefin tuna are specified in §635.5.

\* \* \* \* \*

(2) *Transfer*. BCD tags for use on Pacific bluefin tuna issued under this section are not transferable and are usable only by the permit holder to whom they are issued.

\* \* \* \* \*

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